D.B.CIVIL WRIT PETITION (PIL) NO. 4388/2006
Gram Panchayat, Kalladwas v. State of Rajasthan & ors.

Date of order : 14.09.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ
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Shri Sunil Beniwal for the petitioner

This writ petition has been filed as a public interest litigation for quashing the notification dated 17.12.2005 under section 4 of the Land Acquisition Act seeking to acquire 6.5 hectares land at Manva Khera within tehsil Girwa, district Udaipur for construction of sewerage treatment plant, as well as the order dated 18.5.2006 rejecting the objections against the notification under section 5A of the said Act.

Case of the petitioner, briefly, is that similar notification was issued in 2003 with respect to 20 hectares of land at Kalladwas for construction of sewerage treatment plant which was challenged in this Court in D.B.Civil Writ Petition no. 907/2003 and the petition was allowed in view of the findings of the committee of experts on 6.11.2003. This Court found that the site proposed by the PHED was under intensive agriculture and had a huge ground water potential and therefore not suitable for setting up of the sewerage treatment plant.

The PHED was directed to look into suggestions of the committee with regard to the alternative site and also take into consideration any other suitable site for setting up the treatment plant. According to the petitioner, disregarding the suggestions of the committee the respondents have selected a site which is close to the residential area. In the petition the disadvantages of the proposed site have been mentioned as (a) the site is agricultural land yielding three bumber crops in a year; (b) water level of the land is also very high; (c) the site is reserved for residential purpose as per master-plan of Udaipur city for the year 2003-04; (d) the site is surrounded by residential area; (e) cost of land is also very high; and (f) construction of treatment plant will adversely affect natural water flow of river Ayad from Manva Khera to Kalladwas and Kanpur. However, at the time of hearing the closeness to residential area was highlighted by the counsel.

The point for consideration is to what extent this Court can interfere with the notification under section 4 of the Land Acquisition Act while exercising power of judicial review under Article 226 of the Constitution of India.

The notification under section 4 of the Act can be challenged on limited grounds viz. non- fulfilment of conditions precedent specified in sub-section (1) of section 4 such as absence of public

notice and other mandatory requirements prescribed therein or mala fide or colourable exercise of power , for example, where the real purpose is to acquire the land for some private purpose or there is no purpose at all or that the acquisition is intended to serve some other purpose than professed. If this is the scope of interference at the instance of persons aggrieved, that is to say, those directly affected by acquisition of their land, we wonder, whether scope of interference in public interest litigation can be wider. It is to be kept in mind that the land is sought to be acquired for construction of sewerage treatment plant which undoubtedly itself is a public purpose. No argument to the contrary has been made. As indicated above, the dispute relates to site. It is however not in dispute that on re-consideration of the matter pursuant to direction of this Court the authorities selected another site and a much lesser area of land is now sought to be acquired. While considering the validity of notification under section 4 this Court cannot sit in appeal over the judgment of the State Government. The earlier site was said to be unsuitable being conducive to agricultural purposes, the new site is said to be unsuitable as being close to residential area. The objections/disadvantages referred to above formed part of the objections under Section 5A of the Act which the authorities apparently considered. We do not think in these proceedings under Article 226 we can a different view. No case is

made out for interference in this public interest litigation.

Writ petition is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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